

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In Re:

Richard Brown Mitchell, Jr.

a.k.a. R.B. Mitchell

Debtor.

Case No.: 10-38146-DOT

Chapter 13

John J. McAvoy

Tiffany S. McAvoy

Plaintiffs,

v.

Richard Brown Mitchell, Jr.

Robert E. Hyman, Trustee

Defendants.

RESPONSE TO MOTION FOR RELIEF FROM STAY OR FOR ADEQUATE PROTECTION

Richard Brown Mitchell, Jr., (Defendant), by and through counsel, responds as follows to the Motion For Relief From Stay or For Adequate Protection filed herein:

1. The allegations as stated in Paragraphs 1 and 2 are admitted.
2. The defendant is without sufficient knowledge of the allegations to admit or deny the allegations as stated in Paragraphs 3, 4 and 5 and as such the same are denied.
3. The allegations as stated in paragraph 6 are speculative, draw inferences and are denied. The Carolina Skiff is in defendant's garage and the 1997 Ford Truck is at the debtor's residence. It is further stated that both the Carolina Skiff and the 1997 Ford Truck are used in the debtors trade or profession and pursuant to Va. Code Section 34-26 paragraph 7 as "Tools, books, instruments, implements, equipment, and machines, **including motor vehicles, vessels, ... are necessary for use in the course of the householder's occupation.** The Defendant states further that pursuant to said paragraph, *"No officer or other person shall levy or distrain upon, or attach, such articles, or otherwise seek to subject such articles to any lien or process. It shall not be required that a householder designate any property exempt under this section in a deed in order to secure such exemption"*. Any seizure if claimed, is in violation of Virginia Code Section 34-26 and is in further violation of Section 362 of the U.S. Bankruptcy Code and is sanctionable.
4. As to Paragraph 7, Defendant admits that he transferred his 28 foot Chesapeake Classic boat to his son on his son's 16th birthday not as a fraudulent conveyance but a gift from a father to his son. Defendant has 3 parcels of improved real estate with substantial equity and other vehicles with no

liens which he would have transferred had he intended to convey property with intent to defeat any claims by the Plaintiffs.

5. The allegations as stated in Paragraphs 8 through 11 are denied.

6. The Plaintiffs are adequately protected herein as they are secured judgment lien creditors on all 3 of the Defendant's real estate holdings which are conservatively valued in excess of \$798,000.00 and which after deduction of obligations secured by purchase money deeds of trusts have remaining equity of approximately \$517,520.00.

7. Any continued claim by the Plaintiffs to the vehicles and/or vessels of the Defendant are in violation of both Va. Code Section 34-26 and Section 362 of the U.S. Bankruptcy Code.

8. Any seizure and sale of the Defendants vehicles and/or vessels will result in miniscule payment of the Plaintiff's claim which is secured by a judgment lien on all of the Defendants real estate.

9. Any seizure and sale of the Defendants vehicles and/or vessels will destroy the Defendant's ability to make a living and will condemn Defendant's Chapter 13 case to failure.

WHEREFORE, the Defendant requests that the Court enter no Order finding that the Plaintiffs are not adequately protected; that the automatic stay remain in full force and effect and that the Defendant not be impeded from making a living with any vehicle and or vessel that he may require to make the plan payments and for such other and further relief as the Court may seem just.


RICHARD BROWN MITCHELL
By Counsel



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Certificate of Service

I hereby certify that a true copy of the foregoing Response was served my regular mail or electronically by email or ECF on this 22nd, day of December 2010, on all necessary parties as per the list attached.



James S. Sease

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